

From: [Law Offices of Paul M. Gayle-Smith](#)
To: ["Dave Burns"](#)
Cc: elawyer@gayle-smith.com
Subject: Trial Continuance
Date: Saturday, June 08, 2013 11:06:14 AM
Importance: High
Sensitivity: Confidential

Dave:

Yes, I will stipulate then to a 90-day continuance and then I can agree to a restart of pleading and discovery. This should permit you to file whatever amended answer you wish.

You do realize that your client first contacted me after he filed his petition for bankruptcy, as is shown in the emails you have listed as exhibits, right? Specifically, he contacted me to chit chat about his bankruptcy filing (as though my debt was not included) and he asked that I consider continuing to represent him. This is not a typical debtor/creditor relationship either. I was entitled to contact the debtor about any legitimate matter not directly related to the petition for bankruptcy. So, there was no violation of any court orders by my actions (or rather reactions) even if I had contacted him first (which I did not). So I'm not sure where you are coming from with your sudden threats of demands for punitive damages. Yes, I took a class in bankruptcy law. In 1990! And no there was nothing "willful" about any contact I had with my/your client. Also, since your client apparently intends to pay back at least a sizable portion of his confessed "moral obligation" without any legal requirement, your seeking to allege some technical (and unfounded) violation of some obscure bankruptcy procedure seems particularly misplaced, Dave.

Please let me know if you will stipulate to a 90-day continuance with the conditions stated above. Also, let me know if you have any questions or concerns. Thank you.

Regards,

Paul

Paul M. Gayle-Smith
Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609
tel. 575.522.8300
fax. 866.324.3783
web. Gayle-Smith.com

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 Please consider the environment before printing this e-mail.

From: Dave Burns [mailto:dave@daveburnslaw.com]
Sent: Saturday, June 08, 2013 9:30 AM
To: Law Offices of Paul M. Gayle-Smith
Subject: RE: Trial
Sensitivity: Confidential

Paul:

I do not recall you making a settlement proposal. You only asked if I was authorized to settle the matter. I explained I was not. I understand your settlement offer is now for my client pay \$173,264.78 in monthly installment payments of \$500. I do not know how quickly I will be able to get in touch with my client.

As to your request for a continuance, I will stipulate to a continuance if you will stipulate to an amended answer and counterclaim. From my review of the file you violated the automatic stay under 11 USC 362(a) by contacting the debtor after he filed for bankruptcy to make arrangements to collect a pre-petition debt with post-petition assets. I would like to bring an action for a stay violation and contempt. I will request punitive damages because your violation was willful in that you are a lawyer and explained to the debtor you took a class in bankruptcy law so you are familiar with the process.

Please let me know if you will stipulate to an amended answer with a counterclaim as described above and a continuance.

Dave Burns
Attorney at Law

Dave Burns Law Office, LLC
475 Grain Exchange North
301 Fourth Avenue South
Minneapolis, Minnesota 55415
Direct 612-677-8351
Facsimile 866-223-3806
www.daveburnslaw.com

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From: Law Offices of Paul M. Gayle-Smith
Sent: Friday, June 07, 2013 8:40 AM
To: Dave Burns
Cc: elawyer@gayle-smith.com

Subject: Trial

Dave:

On Monday, I intend to request a 60-day continuance of the trial of this matter. My mother was recently diagnosed with a rare and unknown form of cancer and I took off more than six weeks to visit with her in New York as a result. I am still catching up with a few of my cases including this one. I would really appreciate your professional courtesy and cooperation in this regard. Please let me know your client's position regarding this continuance as soon as possible.

Since you have not responded to my most recent settlement proposal I have attached an amended invoice for attorney services rendered. The bases of the amendment are explained in the invoice.

Again, your client could settle this entire matter today by simply agreeing to repay his moral and legal debt on a monthly basis of \$500 per month. I am willing to include provisions regarding times of low income and/or unemployment. Given my intimate knowledge of your client's employment qualifications and history I know that my proposal is very reasonable. Otherwise, should I prevail at trial next week, I will of course seek immediate payment of the judgment against your client and will have no time for excuses. This latter course of action would not be in the best interest of Brenner Fody that is clear.

I am available today and tomorrow to discuss this matter with you via telephone. Please contact me. Thank you.

Regards,

Paul

Paul M. Gayle-Smith

Law Offices of Paul M. Gayle-Smith

2961 Sundance Circle

Las Cruces, New Mexico 88011-4609

tel. 575.522.8300

fax. 866.324.3783

web. Gayle-Smith.com

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From: Dave Burns [<mailto:dave@daveburnslaw.com>]

Sent: Monday, June 03, 2013 5:36 PM

To: Law Offices of Paul M. Gayle-Smith

Subject: RE: Paul M. Gayle-Smith v. Michael Fody, III (Adv. No. 12-04298)

We were to provide copies of exhibits and confer about the waiver of objections to their admissibility and facts which are not in dispute. I have provided a copy of defendant's exhibits and a draft fact stipulation. I will assume you have no objections to the admissibility of the exhibits and await any proposed additions to the fact stipulation.

Dave Burns

Attorney at Law

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301 Fourth Avenue South
Minneapolis, Minnesota 55415
Direct 612-677-8351
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From: Law Offices of Paul M. Gayle-Smith [<mailto:elawyer@gayle-smith.com>]

Sent: Monday, June 03, 2013 12:06 PM

To: Dave Burns

Cc: elawyer@gayle-smith.com

Subject: RE: Paul M. Gayle-Smith v. Michael Fody, III (Adv. No. 12-04298)

Importance: High

Ha! I have already read the scheduling order. My question stands.

Paul M. Gayle-Smith

Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609
tel. 575.522.8300
fax. 866.324.3783
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From: Dave Burns [<mailto:dave@daveburnslaw.com>]
Sent: Monday, June 03, 2013 10:31 AM
To: Law Offices of Paul M. Gayle-Smith
Subject: RE: Paul M. Gayle-Smith v. Michael Fody, III (Adv. No. 12-04298)

See paragraph two of the scheduling order for what to confer about.

If you would to propose more facts you may do so via the stipulation in word format sent to you in this original email.

Thanks, DB

Dave Burns
Attorney at Law

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From: Law Offices of Paul M. Gayle-Smith [<mailto:elawyer@gayle-smith.com>]
Sent: Monday, June 03, 2013 11:25 AM
To: Dave Burns
Cc: elawyer@gayle-smith.com
Subject: RE: Paul M. Gayle-Smith v. Michael Fody, III (Adv. No. 12-04298)
Importance: High

Dave:

I can agree to your stipulation of undisputed facts but we should probably attempt to agree to more facts. What exactly would you like to confer about?

Paul

Paul M. Gayle-Smith
Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609

tel. 575.522.8300
fax. 866.324.3783
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From: Dave Burns [<mailto:dave@daveburnslaw.com>]
Sent: Monday, June 03, 2013 9:50 AM
To: elawyer@gayle-smith.com
Subject: Paul M. Gayle-Smith v. Michael Fody, III (Adv. No. 12-04298)

Paul:

Pursuant to the court's scheduling order please find defendant's proposed stipulation of undisputed facts. For this matter set for trial on June 17th. Also attached are the defendant's exhibits for review which are;

1. Complaint
2. Answer
3. Defendant's discovery requests
4. Plaintiff's responses to discovery

I am available to confer with you by telephone today. Please contact me.

Regards, DB

Dave Burns
Attorney at Law

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From: [Law Offices of Paul M. Gayle-Smith](#)
To: ["Dave Burns"](#)
Cc: elawyer@gayle-smith.com
Subject: Stipulations
Date: Monday, June 10, 2013 5:54:50 PM
Importance: High
Sensitivity: Confidential

Dave:

I cannot stipulate to an unofficial docket report. Also you never sent me this proposed exhibit.

I am concerned that we have not discussed your theory of why my claims are likely to fail. I believe such a discussion would be appropriate as we prepare for trial.

Let me say also that I am appalled that you were unable to convince your client to agree to a continuance after our discussion, especially in the circumstances I described to you and in my opposed motion. Why did he suddenly change his mind after I agreed to not object to his condition regarding the continuance? Did you both actually read the motion?

Paul

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From: Dave Burns [mailto:dave@daveburnslaw.com]
Sent: Monday, June 10, 2013 11:36 AM
To: Law Offices of Paul M. Gayle-Smith
Subject: Gayle-Smith v. Fody stipulations

Paul:

I spoke with Judge Kressel's clerk this morning and Judge Kressel is not in chambers today so there

will be no answer to your request for an extension. As you know, our pre-trial filings are due today. I would like to file the two attached stipulations. Regarding the stipulation of facts, this is essentially the same as the one I sent you before that you agreed to. However, I removed the facts about a written fee agreement because, as I understand it now, the existence of a written contract is in dispute. Secondly, the exhibit list is a listing of all the exhibits I have sent you via email.

Please review today and respond to me so that I can file them by the deadline.

Regards, DB

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Attorney at Law

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From: [Law Offices of Paul M. Gayle-Smith](#)
To: ["Dave Burns"](#)
Cc: elawyer@gayle-smith.com
Subject: RE: Stipulations
Date: Monday, June 10, 2013 7:02:14 PM
Attachments: Email. Billing Michael Fody. June 23, 2008.pdf
Fee Agreement Fody III December 2007.pdf
Importance: High
Sensitivity: Confidential

Dave:

First, I would like you to amend the Stipulation/List of Exhibits to include all Defendant's exhibits as Plaintiff's exhibits 1 through 14 too, so that I may use them in my case in chief. In addition I would like to include the following to the list of Plaintiff's exhibits: (1) Original Fee Agreement (Exhibit 15)(attached) and (2) June 23, 2008 (Exhibit 16) (attached).

Please let me know if you have any questions or concerns. Thanks,

Paul

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Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609
tel. 575.522.8300
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From: Dave Burns [mailto:dave@daveburnslaw.com]
Sent: Monday, June 10, 2013 6:00 PM
To: Law Offices of Paul M. Gayle-Smith
Subject: Re: Stipulations
Sensitivity: Confidential

If I strike the docket exhibit from the stipulation can I file the exhibit and fact stipulations?

Dave Burns
(612) 677-8351

www.daveburnslaw.com

----- Reply message -----

From: "Law Offices of Paul M. Gayle-Smith" <elawyer@gayle-smith.com>

To: "Dave Burns" <dave@daveburnslaw.com>

Cc: "elawyer@gayle-smith.com" <elawyer@gayle-smith.com>

Subject: Stipulations

Date: Mon, Jun 10, 2013 6:54 PM

Dave:

I cannot stipulate to an unofficial docket report. Also you never sent me this proposed exhibit.

I am concerned that we have not discussed your theory of why my claims are likely to fail. I believe such a discussion would be appropriate as we prepare for trial.

Let me say also that I am appalled that you were unable to convince your client to agree to a continuance after our discussion, especially in the circumstances I described to you and in my opposed motion. Why did he suddenly change his mind after I agreed to not object to his condition regarding the continuance? Did you both actually read the motion?

Paul

Paul M. Gayle-Smith

Law Offices of Paul M. Gayle-Smith

2961 Sundance Circle

Las Cruces, New Mexico 88011-4609

tel. 575.522.8300

fax. 866.324.3783

web. Gayle-Smith.com

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From: Dave Burns [<mailto:dave@daveburnslaw.com>]

Sent: Monday, June 10, 2013 11:36 AM

To: Law Offices of Paul M. Gayle-Smith

Subject: Gayle-Smith v. Fody stipulations

Paul:

I spoke with Judge Kressel's clerk this morning and Judge Kressel is not in chambers today so there will be no answer to your request for an extension. As you know, our pre-trial filings are due today. I would like to file the two attached stipulations. Regarding the stipulation of facts, this is essentially the same as the one I sent you before that you agreed to. However, I removed the facts about a written fee agreement because, as I understand it now, the existence of a written contract is in dispute. Secondly, the exhibit list is a listing of all the exhibits I have sent you via email.

Please review today and respond to me so that I can file them by the deadline.

Regards, DB

Dave Burns
Attorney at Law

Dave Burns Law Office, LLC
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301 Fourth Avenue South
Minneapolis, Minnesota 55415
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From: [Law Offices of Paul M. Gayle-Smith](#)
To: elawyer@gayle-smith.com
Subject: FW: Stipulations
Date: Thursday, June 13, 2013 2:54:01 PM
Importance: High
Sensitivity: Confidential

Paul M. Gayle-Smith

Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609
tel. 575.522.8300
fax. 866.324.3783
web. Gayle-Smith.com

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From: Law Offices of Paul M. Gayle-Smith [<mailto:elawyer@gayle-smith.com>]
Sent: Tuesday, June 11, 2013 3:39 PM
To: 'Dave Burns'
Cc: elawyer@gayle-smith.com
Subject: RE: Stipulations
Importance: High
Sensitivity: Confidential

Dave:

Last night when I said no I was talking about your plan regarding the exhibits. I can see how you may have honestly misinterpreted my response, however. But please note that my emails show that I responded within 15 minutes (not 2 ½ hours)

Is your client saying that he never received and signed a written fee agreement or merely that he does not recall the contents of the written fee agreement?

No, regarding the exhibits. Last night I asked you to list my exhibits separately (1-16). Why have you not done so? You have only listed one exhibit for me. Why?

Paul

Paul M. Gayle-Smith

Law Offices of Paul M. Gayle-Smith
2961 Sundance Circle
Las Cruces, New Mexico 88011-4609
tel. 575.522.8300
fax. 866.324.3783
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From: Dave Burns [<mailto:dave@daveburnslaw.com>]
Sent: Tuesday, June 11, 2013 2:03 PM
To: Law Offices of Paul M. Gayle-Smith
Subject: RE: Stipulations
Sensitivity: Confidential

Paul:

My client does not recall seeing any written fee agreement. As to the fact stipulation I did not file it yesterday because when I suggested that I file the stipulations as written yesterday at 8:43 pm you said "no" at 11:17 pm. I will now file the fact stipulation given your agreement with it below.

As to the stipulation about exhibits, can I file this one as it is written (see attached)? Not stipulating to the fee agreement certainly does not preclude you from attempting to get it admitted on your own.

Let me know.

Thanks, DB

Dave Burns
Attorney at Law

Dave Burns Law Office, LLC
475 Grain Exchange North
301 Fourth Avenue South
Minneapolis, Minnesota 55415
Direct 612-677-8351
Facsimile 866-223-3806
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From: Law Offices of Paul M. Gayle-Smith [<mailto:elawyer@gayle-smith.com>]

Sent: Tuesday, June 11, 2013 1:49 PM

To: Dave Burns

Cc: elawyer@gayle-smith.com

Subject: RE: Stipulations

Importance: High

Sensitivity: Confidential

Dave:

I'm a little confused. How could your client "not recall seeing the written attorney fee agreement"? What is he trying to say now? Does he have a "different" copy of the initial written fee agreement?

Moreover, I specifically referred to the written fee agreement in my email which your client forwarded to me on August 1, 2008. This is an example of why I filed for a trial continuance. We should be able to stipulate to such basic facts as this. Now valuable court time will be spent delving into this matter.

I agree to the stipulation of facts, yes. Again, we should be able to stipulate to more basis facts than those currently included. Why did you not file the stipulation of facts yesterday?

Paul

Paul M. Gayle-Smith

Law Offices of Paul M. Gayle-Smith

2961 Sundance Circle

Las Cruces, New Mexico 88011-4609

tel. 575.522.8300

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From: Dave Burns [<mailto:dave@daveburnslaw.com>]

Sent: Tuesday, June 11, 2013 10:30 AM

To: Law Offices of Paul M. Gayle-Smith
Subject: RE: Stipulations
Sensitivity: Confidential

Paul:

I reviewed your two exhibits with my client. I will stipulate to the admissibility of the August 1, 2008 email. My client does not recall seeing the written attorney fee agreement so I will not stipulate to its admissibility.

With that will you agree to allow me to file the attached stipulations today?

Thanks, DB

Dave Burns
Attorney at Law

Dave Burns Law Office, LLC
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301 Fourth Avenue South
Minneapolis, Minnesota 55415
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From: Dave Burns
Sent: Monday, June 10, 2013 9:43 PM
To: Law Offices of Paul M. Gayle-Smith
Subject: RE: Stipulations
Sensitivity: Confidential

Paul:

I will have to review your exhibits with my client before stipulating to their admissibility. I suggest I file the stipulations regarding facts and exhibits now as attached. If you would like to include the defendant's exhibits on your own exhibit list you can. I will likely stipulate to the admissibility of your two exhibits and then I can file an amended stipulation but I need to review them with my client first. Are you okay with that plan?

Thanks, DB
Dave Burns
Attorney at Law

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From: Law Offices of Paul M. Gayle-Smith
Sent: Monday, June 10, 2013 8:02 PM
To: Dave Burns
Cc: elawyer@gayle-smith.com
Subject: RE: Stipulations

Dave:

First, I would like you to amend the Stipulation/List of Exhibits to include all Defendant's exhibits as Plaintiff's exhibits 1 through 14 too, so that I may use them in my case in chief. In addition I would like to include the following to the list of Plaintiff's exhibits: (1) Original Fee Agreement (Exhibit 15)(attached) and (2) June 23, 2008 (Exhibit 16) (attached).

Please let me know if you have any questions or concerns. Thanks,

Paul

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To: Law Offices of Paul M. Gayle-Smith
Subject: Re: Stipulations
Sensitivity: Confidential

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----- Reply message -----

From: "Law Offices of Paul M. Gayle-Smith" <elawyer@gayle-smith.com>
To: "Dave Burns" <dave@daveburnslaw.com>
Cc: "elawyer@gayle-smith.com" <elawyer@gayle-smith.com>
Subject: Stipulations
Date: Mon, Jun 10, 2013 6:54 PM

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I am concerned that we have not discussed your theory of why my claims are likely to fail. I believe such a discussion would be appropriate as we prepare for trial.

Let me say also that I am appalled that you were unable to convince your client to agree to a continuance after our discussion, especially in the circumstances I described to you and in my opposed motion. Why did he suddenly change his mind after I agreed to not object to his condition regarding the continuance? Did you both actually read the motion?

Paul

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 Please consider the environment before printing this e-mail.

From: Dave Burns [<mailto:dave@daveburnslaw.com>]
Sent: Monday, June 10, 2013 11:36 AM
To: Law Offices of Paul M. Gayle-Smith
Subject: Gayle-Smith v. Fody stipulations

Paul:

I spoke with Judge Kressel's clerk this morning and Judge Kressel is not in chambers today so there will be no answer to your request for an extension. As you know, our pre-trial filings are due today. I would like to file the two attached stipulations. Regarding the stipulation of facts, this is essentially the same as the one I sent you before that you agreed to. However, I removed the facts about a written fee agreement because, as I understand it now, the existence of a written contract is in dispute. Secondly, the exhibit list is a listing of all the exhibits I have sent you via email.

Please review today and respond to me so that I can file them by the deadline.

Regards, DB

Dave Burns
Attorney at Law

Dave Burns Law Office, LLC
475 Grain Exchange North
301 Fourth Avenue South
Minneapolis, Minnesota 55415
Direct 612-677-8351
Facsimile 866-223-3806
www.daveburnslaw.com

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